

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JOSHUA MELLO and RACHEL
WARE,
Plaintiffs,

v.

DEREK GUSTAFSON; TIMOTHY
VESEY; STEVEN CATALANO; JOHN
ROCCHIO; and EDWARD ARRUDA,
Defendants.

C.A. No. 23-480-JJM-LDA

ORDER

Plaintiffs Joshua Mello and Rachel Ware have asked this Court to reconsider its decision (ECF No. 16) granting partial dismissal without prejudice under the *Heck* doctrine. ECF No. 21. The Defendants have also filed a renewed Motion to Dismiss (ECF No. 24) because the Plaintiffs filed an Amended Complaint (substantially the same in all relevant respects).

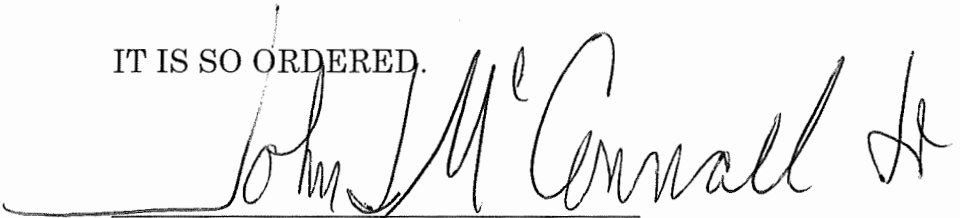
There is no basis for the Court to reconsider its Order. The U.S. Supreme Court decision in *Heck v. Humphrey*, 512 U.S. 477 (1994) established that a person cannot bring a civil rights lawsuit for damages if a favorable judgment would necessarily imply the invalidity of their conviction or sentence unless the conviction or sentence has been overturned. In simpler terms, a person cannot sue for damages related to a conviction that has not been overturned first. The Plaintiffs claim would

certainly call into question his state criminal conviction¹, therefore barring them from being a subject of a federal § 1983 action. Plaintiff's claim of constitutional violations can be adequately addressed in the state case, appeals, and post-conviction relief, and possible cert to the U.S. Supreme Court. The Court did NOT dismiss the excessive force claims against Defendants John Rocchio and Edward Arruda.²

Thus, the Court GRANTS without prejudice³ Defendants' Motions to Dismiss the Amended Complaint (ECF No. 24) as follows: The Court dismisses all claims in the Amended Complaint, except for the specific allegations of excessive force against Officers Edward Arruda and John Rocchio. The Court dismisses Defendants Derek Gustafson, Timothy Vesey, and Steven Catalano without prejudice from this Amended Complaint. ECF No. 24

The Court DENIES Plaintiffs' Motion for Reconsideration. ECF No. 21.

IT IS SO ORDERED.



John J. McConnell, Jr.
Chief Judge
United States District Court

March 13, 2024

¹ Explicitly, the Plaintiffs admit that they want this Court to allow them to "demonstrate their innocence in the underlying criminal offence." ECF No. 21 at 2.

² The Plaintiffs correctly note that "the *Heck* bar did not apply to a Plaintiffs' claim of excessive force by police officers during his arrest." ECF No. 21 at 1.

³ If the conviction is overturned, Plaintiffs may seek to amend to assert any non-*Heck*-barred claims.